



Virginia  
Regulatory  
Town Hall

## Periodic Review and Exempt Action or Exempt Agency Final Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>VAC Chapter Number:</b>	24 VAC 30-271-10
<b>Regulation Title:</b>	Industrial Access Program Policy
<b>Action Title:</b>	Replacement for Repealed APA-Exempt Regulation 24 VAC 30-270-10
<b>Date:</b>	September 17, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation which is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1.

Note that agency actions exempt pursuant to § 9-6.14:4.1 do not require filing with the Registrar a Notice of Intended Regulatory Action or at the proposed stage. The agency must still, however, comply with the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their final regulation in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation replaces 24 VAC 30-270-10 *et seq.* filed by description in 1994 that established guidelines, policies, and procedures VDOT follows in providing funding under the Industrial Access Fund Program, as administered by the Commonwealth Transportation Board

(CTB). The original regulation will be repealed simultaneously when this regulation becomes effective.

This replacement regulation includes the following features:

- Replaces filed-by-description version of the *Industrial Access Program Guide* (IAPG) with an updated Industrial Access Policy in full text form,
- Changes the regulation title; and
- Refers to the IAPG as a Guidance Document.

The updated policy incorporates the following changes over the 1989 original policy in the previous IAPG filed in 1994:

- The CTB added a second purpose for the use of industrial access funds – improving existing roads that may be inadequate to serve new or substantially expanding eligible establishments;
- Added the term “licensed” to “publicly owned airports;”
- The CTB incorporated a five-year maximum time limit for bonds or other surety guaranteed by the local governing body when an eligible establishment is not yet constructed or under firm contract, and extended bond periods for projects approved between March 21, 1996, and July 1, 1999, for an additional two years, provided the local governing body continues to provide surety;
- The CTB provided for a case-by-case evaluation of projects needing additional improvements to make access to the site adequate (either to improve safety or facilitate traffic flow), provided that the local governing body requests such evaluation by resolution;
- The CTB addressed the funding of eligible sites owned by regional industrial facility authorities provided by § 15.2-6400 et seq.; funds may be allocated for access to such sites without penalty to the surrounding jurisdiction; one regional project per fiscal year can be funded in this manner, and all other limitations of the policy apply; and
- Obsolete nomenclature was updated (e.g., “Department of Business Assistance” for “Governor’s Department of Economic Development”).

The IAPG now listed as a Guidance Document contains more detailed information on procedures, including process flowcharts, samples of required documentation, and a checklist to assist program participants in meeting the terms of the program. In reviewing 24 VAC 30-270-10 et seq., the Office of the Attorney General recommended that the Policy itself be filed, the IAPG be listed as a Guidance Document, and determined that the regulation is exempt from the APA under § 9-6.14:4.1 B (3) and (4) (effective October 1, 2001, § 2.2-4002 B (3) and (4)).

Due to the previous filing status of the guide as “filed by description,” and the number of changes involved in the amended regulation, the Registrar recommended that the original regulation be repealed and a new one promulgated under a different VAC number.

## Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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Under the provisions of 33.1-12, the CTB has general authority to let construction and maintenance contracts for highways, and to administer, distribute, and allocate transportation funds. However, the specific authority for the program covered by both 24 VAC 30-270-10 et seq. and 24 VAC 30-271-10 et seq. is § 33.1-221, which appropriates to the CTB funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes. These funds shall be used by the CTB for the purposes specified in the statute, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

The funds shall be expended by the CTB for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town may guarantee to the CTB by bond or other acceptable device that such will occur.

The CTB may exercise its discretion in determining application procedures and other factors.

However, the statute does mandate the following:

1. Towns which receive highway maintenance payments under § 33.1-41.1 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.
2. No such access road shall be constructed or improved on a privately owned plant site.
3. If no establishment or airport acceptable to the CTB be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited.
4. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the CTB shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the industrial establishment within the total industrial area. In any industrial park or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof.

## Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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VDOT received no public comment in response to the Notice of Periodic Review published in *The Virginia Register*. No advisory group was formed to assist in the periodic review.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected. Please state the reasons the agency determined the regulation be amended or terminated.*

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Goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
2. To ensure the program receives satisfactory audit reports.
3. Is the regulation written clearly and understandably?

Goal 1: § 33.1-221 states that the CTB shall administer the funds for the construction of access roads to various types of manufacturing, processing, or other qualified establishments. The intent of the statute is to facilitate the construction of roads that will benefit the public welfare by enhancing the attractiveness of Virginia to businesses that may want to expand or locate facilities in the state. Economic development has many tangible benefits: it provides a more diversified tax base for localities; increases overall tax revenues when the economy is strong; and provides additional employment opportunities. Therefore, VDOT and the CTB believe that the replacement regulation serves the public interest.

Goal 2: Projects may be randomly selected by VDOT's Internal Audit Division for review. Within the Secondary Roads Division, program fund allocations are monitored and reported monthly. Specific project spending is monitored periodically. Expenditures on projects administered by parties other than VDOT are approved by the Secondary Roads Division. All these actions help ensure that funds are spent as directed.

Goal 3: The replacement regulation clearly lists program criteria, including restrictions on the types of projects for which funds may be used, allowable uses of funding, and funding limitations. It designates appropriate roles in the decision-making process for local elected officials and VDOT personnel. Despite the lack of public comment received concerning the original regulation, VDOT implemented changes intended to improve its clarity and ease of comprehension, and its effectiveness.

Neither the original nor the replacement regulation has any effect on the family or family stability.

### Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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There is no substitute for achieving the purposes of the original regulation without having a general statement outlining the policies and procedures VDOT will follow in carrying out the directions of the CTB, along with a more detailed Guidance Document to assist both VDOT and program participants in securing funding. It is reasonable and appropriate for the CTB to adopt a policy setting forth the criteria, funding limitations, restrictions, or allowances under which it will allocate funds to participating localities. In this manner, all projects will be subject to the same standardized procedures, ensuring fairness and equal access to funding for all.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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VDOT repealed the regulation entitled *Industrial Access Program Guide* and promulgated a replacement regulation entitled *Industrial Access Policy* by signature of the Deputy Commissioner on September 17, 2002. Under the rules established in the *Registrar's Form, Style, and Procedure Manual*, actions exempt from the APA under the provisions of § 9-6.14:4.1 B (now 2.2-4002 B 4) become effective upon filing, so the action will become effective upon receipt by the Registrar.

### Additional Information

*Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.*

*Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.*

*If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.*

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Text of the replacement regulation is attached. The Office of the Attorney General originally reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemptions: § 9-6.14:4.1 B (3) and (4) (now 2.2-4002 B (3) and (4)), which exempts regulations dealing with grants of state or federal funds or property and specifications for public facilities. The OAG reviewed the policy and issued an opinion dated November 27, 2001, that the IAPG, which was filed by description, was more properly filed as a Guidance Document for the policy itself, and that the Industrial Access Policy passed by the CTB should be filed as a regulation in its place.

Sample formats for documentation associated with the industrial access policy (e. g., resolutions, acknowledgements, letters of credit, surety bonds, pledge and assignments of deposits, and escrow agreements) are included in the appendices of the Guidance Document.

The Office of the Attorney General also determined that VDOT has the authority to change the original regulation as outlined above. On the advice of the Registrar, VDOT is repealing 24 VAC 30-270-10 et seq. (the filed by description version of the IAPG), and replacing it with 24 VAC 30-271-10.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation has no effect on the family or family stability, nor does it affect any of the factors listed above.